No. 595

In the Supreme Court of the United States

OCTOBER TERM, 1941

SWIFT & COMPANY, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION

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OPINION BELOW

The District Court delivered no opinion. The findings of fact, conclusions of law, and final decree of the court appear in the printed record at pages 90–98. The report of the Interstate Commerce Commission (R. 34–57) is reported in 238 I. C. C. 179.

JURISDICTION

The final decree of the District Court was entered on June 4, 1941 (R. 97). A petition for appeal was filed on July 10, 1941 (R. 99), and was

allowed the same day (R. 101). Jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219–221 (U. S. C., title 28, secs. 47, 47a), and under section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936 (U. S. C., title 28, sec. 345). Probable jurisdiction was noted on October 13, 1941.

QUESTION PRESENTED

Whether a rail carrier of direct shipments of livestock in carload lots to the Chicago Union Stock Yards is required by the Interstate Commerce Act to furnish, as a part of the carrier's transportation, egress to a public street from unloading pens in the stockyards which the Commission has found to be suitable pens within the meaning of section 15 (5) of the Act.

STATUTES INVOLVED

The relevant provisions of the Interstate Commerce Act and of the Packers and Stockyards Act are set forth in the Appendix, *infra*, pp. 41–42.

STATEMENT

Swift & Company and its wholly-owned subsidiary, Omaha Packing Company, initiated a proceeding before the Interstate Commerce Commission on September 20, 1937, against several common carriers by railroad engaged in transporting

livestock to Chicago. Their complaint alleged in substance that the carriers failed to afford egress from unloading pens at Union Stock Yards in Chicago to the nearest public street for direct shipments [1] of livestock consigned to appellants, free from any charge other than the line-haul transportation rates, and that this was an unreasonable practice under section 1 (6) of the Interstate Commerce Act (U. S. C., title 49, sec. 1 (6)).[2] (R. 35.) The Commission was asked to require the carriers to cease and desist from the alleged unlawful practice, and to establish and maintain reasonable means of egress from the unloading pens to public streets free from the payment of any charges other than the line-haul rate (R. 35–36). Reparation was also sought, but the Commission's decision left no basis for an award, and no question of reparation is now involved. Armour & Company intervened before the Commission in support of the complaint. (R. 36.)

The relevant facts, which are not in dispute, may be summarized from the Commission's report (R. 34–57).

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[1] The term "direct shipments" refers to livestock that is consigned directly to a packer at Union Stock Yards, as distinguished from a shipment consigned to a commission merchant at the stockyard for sale (R. 36).

[2] The tracks of the line-haul carriers do not reach the stockyards; delivery is effected over tracks owned by the Yard Company and leased to the Chicago River and Indiana Railroad Company (R. 38).

Union Stock Yards is owned and operated by the Union Stock Yard & Transit Company and is the principal terminal for rail-borne livestock entering Chicago (R. 37). The Yard Company, with respect to part of its business, has been held to be a common carrier by railroad subject to the Interstate Commerce Act (R. 37–38).[3] It is also a stockyard owner, as that term is defined in the Packers and Stockyards Act, and as such is subject to regulation by the Secretary of Agriculture (R. 38).[4] It was not, however, named as a defendant at any stage in the present proceedings (R. 54, 1).

Direct shipments of livestock consigned to Swift at the Union Stock Yards are transported by the railroads from country origins to unloading platforms on the property of the Yard Company (R. 36).[5] When the livestock reaches the unloading platforms, no one is permitted by the Yard Company to handle the animals except employees of that company; this practice is necessary for the efficient and orderly handling of the large number of shipments arriving at the yards (R. 38–39). Employees of the Yard Company open the car

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[3] *United States* v. *Union Stock Yard Co.*, 226 U. S. 286; *Union Stock Yard Co.* v. *United States*, 308 U. S. 213.

[4] 42 Stat. 159 *et seq.* (U. S. C., title 7, secs. 201–229).

[5] The Commission found that the bulk of the traffic with reference to which complaint was made was consigned to Swift, and for convenience treated that company as if it were the sole complainant (R. 35).

door and drive the livestock through chutes into unloading pens adjacent to the unloading platforms (R. 36). The railroads pay the Yard Company for the unloading service performed by it, and absorb the charge made for this service out of the line-haul rates (R. 42). The unloading platforms, chutes, and pens are owned by the Yard Company (R. 36). If employees of Swift are present at the unloading pens when the animals are placed therein, they drive the animals from the unloading pens through the property of the Yard Company to Swift's plant located outside the stockyards (R. 36).[5] If employees of Swift are not at the unloading pens when the animals are placed there and if the volume of livestock arriving at the unloading pens is sufficient to require immediate removal of the animals, employees of the Yard Company drive them from the unloading pens to holding pens, located throughout the stockyards; later, employees of Swift drive the animals from the holding pens through the Yard Company's property to Swift's plant (R. 36–37).

Swift is required to pay a yardage charge on each animal whether possession of the animals is taken at the unloading pens or at the holding pens by Swift's employees (R. 36–37). This charge is assessed, collected, and retained by the Yard Company on every animal unloaded from railroad cars

[5] Swift's plant is located in an area known as Packingtown, immediately west of the stockyards.

at Union Stock Yards, under authority of a tariff filed by the Yard Company with the Secretary of Agriculture (R. 37). With respect to direct shipments, these charges are compensation for services performed by the Yard Company after the stock is placed in unloading pens and for the use of its facilities, such as holding pens, scales, and alleys and ways in the stockyards. With respect to shipments consigned to commission men, the yardage charges cover, in addition to the services on direct shipments, use of the Yard Company's facilities (*e. g.*, for holding, watering, and feeding) pending the sale of the livestock, and the use of facilities for removal of the stock from the yards after it is sold. (R. 38.)

The animals consigned by direct shipment to Swift are intended for immediate slaughter and are not fed or watered in the yards; since 1933 they have not been weighed on the scales of the Yard Company (R. 40–41). Swift stated before the Commission that it is now prepared to have crews of men ready at all times to remove its stock from the unloading pens upon arrival and that it does not request or desire that any of its direct shipments be held or placed in holding pens. It demands that the railroads accord it the right to take immediate possession of the animals at the unloading pens and to remove them immediately from such pens through the property of the Yard Company to the nearest public street free from the

payment of any yardage charges. Swift does not demand egress over a particular route or at a particular point, but simply egress to a public street via the shortest or most convenient route, to be designated by the railroads. (R. 41.) Since May 25, 1933, in each instance in which Swift has paid yardage charges on direct shipments it has done so under protest and at stated intervals has rendered bills against the railroads for the amount of the yardage charges so paid to the Yard Company (R. 28–31, 40).

Under the provisions of the applicable tariffs of individual railroads serving Chicago, the shippers of livestock have the choice of consigning it to the Union Stock Yards, and having it unloaded there without extra charge, or of taking delivery on team tracks of the individual railroads at other points in the Chicago district. In the latter case they unload the cars themselves. The Commission found that although the facilities available at such team tracks for the unloading of livestock are not extensive and do not include pens into which the stock may be unloaded, they have been found ample for the shipments that have been placed on the tracks for unloading and that many carloads of livestock, consigned principally to small packers, are received and unloaded in this way. In addition, under the tariffs of the line-haul carriers, the packers, including appellants, may, if they choose, specify delivery of direct shipments

on industry tracks serving their plants, by paying the published switching charges in addition to the line-haul rate. (R. 46.)

More than one-third of the direct shipments of livestock arriving at Chicago are unloaded at points other than the Union Stock Yards. The Commission found that direct shipments of livestock are unloaded at the Union Stock Yards only when appellants elect to take delivery there. (R. 46.) At the hearing before the Commission it was stated that practically all of Swift's direct shipments are now being consigned to the plant of its subsidiary, Omaha Packing Company, located approximately two miles from the Union Stock Yards, rather than to Union Stock Yards, the stock being then transported by motor truck over the streets of Chicago to Swift's plant. By having its shipments so consigned Swift is relieved of the payment of yardage charges. (R. 39.)

Direct shipments of livestock transported by rail to packers at Chicago have exceeded 30,000 carloads annually for several years, as compared with a total annual average rail movement to the Union Stock Yards of 94,629 cars (R. 52–53). The shift from producers' consignments to direct consignments is rapidly increasing (R. 53). The Commission found that because of the physical situation at the Union Stock Yards, the railroads could not provide egress from the unloading pens to a public street except by use of the property

of the Yard Company, including alleys, ways, and in some instances overhead viaducts belonging to it (R. 41, 48). The Commission also stated that "the evidence fails to disclose how, as a practical matter, an annual volume of 30,000 carloads of livestock could be discharged into and handled through the public streets of Chicago" (R. 53).

Since 1865, when the Yard Company began operation, there has been a uniform line of demarcation at Chicago between the services which shippers received in return for the transportation charges and the services received from the operation of the stockyards. The line-haul carriers have paid the Yard Company for the unloading service and absorbed the charge for this service out of the line-haul rates (R. 42). However, the railroads never have performed services after the unloading of direct shipments of livestock transported to the Union Stock Yards and they have not been compensated by shippers for any services performed at the stockyards after placing of the animals in unloading pens; the responsibility of the carriers has terminated with the unloading. The rates applicable on livestock transported to the stockyards have not included any allowance to cover yardage service, nor have the carriers had any voice in the nature of the yard services provided, or in the manner in which they have been performed. (R. 45.) From the beginning of operations at the Chicago stock-

yards all shippers have been required to pay to the Yard Company a yardage charge on every animal unloaded at the yards whether the stock was consigned directly to a packer for immediate slaughter or to a commission merchant for sale (R. 29, 42). The yardage services and facilities have been furnished solely by the Yard Company and the dealings with respect to these charges have been solely between the Yard Company and the shippers (R. 42, 45). The amount of yardage charges has been determined solely by the Yard Company, except that since 1921 it has set its rates under the supervision of the Secretary of Agriculture.

Some time prior to 1890 the packers had threatened to move their plants from Chicago and to establish facilities of their own for the receipt of their livestock. This was a matter of concern to the Yard Company because its revenue was received in large measure from the charges collected on livestock slaughtered by the packers. The packers had acquired a large tract of land in Indiana to be used as a new site for their plants. They had also purchased property known as the "Central Stock Yards", near the property of the Yard Company, and had erected on these premises platforms, pens, sheds, and sidings "for the purpose of receiving and distributing among themselves any and all cattle and live stock owned or purchased by them outside of the City of Chicago

or directly consigned to them, and thereby avoiding the payment of yardage charges" to the Yard Company. They had also demanded in litigation instituted in the courts of Illinois that the Yard Company be required to permit the line-haul carriers to use its tracks in making deliveries to the Central Stock Yards. (R. 43.)

These steps taken by the packers resulted in the execution of an agreement dated January 15, 1892, by representatives of some of the larger packing companies with the Chicago Junction Railway[7] and Union Stock Yards Company of New Jersey (a holding company which owned practically all the stock of the Yard Company) (R. 41–43).[8] By the terms of this contract, which was to run for 15 years, the packers agreed to convey to the New Jersey Company the Indiana site and the Central Stock Yards, to dismiss the suits filed in the state courts, to refrain from filing similar suits during the life of the agreement, and to continue their business at Packingtown for 15 years from July 1, 1891. The packers guaranteed that any and all livestock slaughtered by them on their premises or within 20 miles of Chicago during the period

[7] This carrier was the original operating lessee of the Yard Company's stockyard tracks; in 1922 it sublet to the Chicago River and Indiana Railroad. See *Union Stock Yard Co. v. United States*, 308 U. S. 213, 216; n. 2, p. 3, *supra*.

[8] A similar contract was made on the same date between Union Stock Yards Company of New Jersey and certain smaller packers.

should pass through and use the Union yards, with payment of the usual yardage charge, and that the Yard Company should receive and collect from its yardage charges on cattle and livestock owned or purchased by or conveyed to the packers at the Chicago yards the aggregate sum of at least $2,000,000 within six years. They also agreed that as long as the Yard Company conducted its business at Chicago they would not acquire an interest in any other stockyards in Chicago for the receipt and use of their own livestock. (R. 43.)

The consideration for the above covenants by the packers was the receipt by them of income bonds of the New Jersey holding company in the amount of $3,000,000. Swift received approximately one-third of these bonds, which were subsequently redeemed by the issuer. (R. 43.)

The railroad companies were not parties to this agreement, and the Commission has found that there is nothing in the record to indicate that the packers deemed the collection of the yardage charges to be an unreasonable practice on the part of the railroad companies. On the contrary, it found that the action of the packers shows that at the time of this agreement the packers did not consider the assessment of the yardage charges a matter in which the railroads were in any way concerned. At the expiration of the agreement, in 1907, the stockholders of the New Jersey Company were informed that the packers were again

threatening to move their plants from Chicago and that some arrangement must be made to hold them. Swift expected to receive a share of the Yard Company's earnings as late as 1918, but there is no proof that it did receive any return in addition to the bonds received under the contract of 1892. (R. 44.)

After the enactment in 1920 of section 15 (5) of the Interstate Commerce Act,[9] which imposed upon railroads the duty of making delivery of ordinary livestock at public stockyards into suitable pens, the Yard Company continued to collect its yardage charges on all direct shipments. And after the enactment in 1921 of the Packers and Stockyards Act the Yard Company proceeded to file its tariffs covering these charges with the Secretary of Agriculture in accordance with the provisions of that Act. (R. 51.) No complaint was ever made by the livestock producers who sponsored section 15 (5) concerning the payment of these yardage charges (R. 51–52), and the packers continued to acquiesce in assessment of the charges (R. 52).

The packers' interpretation of the carriers' duty is also shown by affirmative action. In the first proceeding involving the application of section 15 (5) to yardage charges on direct shipments,[10] the

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[9] See Appendix, p. 41, *infra*.

[10] *Southwestern Horse & Mule Assn.* v. *A., T. & S. F. Ry.*, 129 I. C. C. 730.

Fort Worth Stock Yards Company, whose policies were controlled by Swift and Armour through ownership of 66.8 percent of its capital stock, successfully contended that the Interstate Commerce Commission had no jurisdiction of the yardage charges because under section 15 (5) the transportation of livestock to public stockyards terminated with delivery into the unloading pens (R. 52). It also appears that on July 1, 1928, at several public stockyards in which the packers held a substantial interest yardage charges were being assessed on direct shipments of livestock (R. 52).[11]

The Commission concluded concerning the practice with respect to direct shipments:

> For more than 50 years prior to the enactment of section 15 (5) and since its enactment, usage and physical conditions combined to end transportation on direct shipments of livestock at the unloading pens. The packers, including complainant and intervener, not only acquiesced in the usage and practice but, in addition, by their agreements with the Yard Company and their participation in the earnings of that company received from its yardage charges, by their guarantee for a limited period of earnings to the Yard Company,

[11] The Commission selected the date of July 1, 1928, because at that time the packers were in unlimited possession and control of the voting stock of the yard companies to which the Commission referred (R. 52).

> and by other acts hereinbefore described, * * * have made it their own. (R. 54–55.)
>
> * * * * *
>
> For many years the packers, including complainant, made the practice of which they now complain their own practice. They gave up their own terminal facilities at the Central Stock Yards for a substantial consideration, and, by their covenants with the Yard Company, made the Union Stock Yards their own terminal facilities in Chicago. (R. 46.)

The Commission found also that in the administration of the Packers and Stockyards Act the Secretary of Agriculture has asserted jurisdiction of yardage charges covering mere egress at many public yards, and that the yardage charges now applicable at the public stockyards of St. Joseph, Missouri, Denver, Colorado, and Omaha, Nebraska, for the use of facilities and services of the yard companies in connection with egress for direct shipments, are those prescribed by the Secretary (R. 53, 54).

The Commission made the following ultimate findings:

> We find that the transportation of direct shipments of livestock consigned to complainant at the Union Stock Yards in Chicago, Ill., ends when the livestock has been unloaded into the unloading pens at the Union Stock Yards. We further find that

> the yardage charges assessed by the Union Stock Yard and Transit Company of Chicago on direct shipments of livestock, as defined in this respect, transported to the Union Stock Yards, for services performed and facilities used beyond the gates leading from the pens in the stockyards into which the livestock is unloaded from railroad cars, are not subject to our jurisdiction.
>
> We further find that defendants' failure to afford egress for shipments of livestock described in the preceding paragraph free from the payment of yardage charges has not resulted and does not result in an unreasonable practice. (R. 55.)

Accordingly, on April 8, 1940, the Commission dismissed the packers' complaint against the railroads (R. 34, 35, 55), and on July 8, 1940, denied a petition for reargument and reconsideration (R. 57). On October 7, 1940, appellants Swift and Omaha brought suit in the District Court of the United States for the Northern District of Illinois, Eastern Division, seeking to have the Commission's order set aside (R. 1). Appellant Armour intervened and participated in the trial (R. 74, 120). The railroads which had been named as defendants before the Commission also intervened, as defendants in the District Court (R. 62–74). The court delivered no opinion but on June 4, 1941, made findings of fact and announced conclusions of law, sustaining the Commission's order (R. 90–

97). On the same day the District Court entered a final decree dismissing the bill of complaint (R. 97).

SUMMARY OF ARGUMENT

I

The question, in particular cases, of where a railroad's duty ends in transporting direct shipments of livestock to public stockyards is one for the administrative judgment of the Interstate Commerce Commission, since decision of the question is complicated by many and difficult problems of transportation for the solution of which expert determination is required. The judgment of the Commission on such a question should not be disturbed if warranted by the facts of the case. Here, the Commission's conclusion that the carriers' obligation terminates at delivery of animals into unloading pens is clearly supported by long usage and the physical conditions which exist at the Chicago Stock Yards.

II

If, however, appellants' contention concerning the nature of this case be accepted, that the issue raised is one of law only and may be determined independently of administrative adjudication, the Government and the Interstate Commerce Commission contend that the applicable rule of law is

not that which appellants advance as controlling. The decisions of this Court, the administrative practice, and the legislative history of the statutes governing railroad transportation at public stockyards combine to show that the carriers' duty in this case ends with unloading into suitable pens and does not extend to providing free egress for unloaded livestock through the property of the stockyard company out to a public way.

ARGUMENT

Appellants urge the existence of a positive requirement of law that direct shipments of livestock be delivered into the unrestricted control of the consignee free of all stockyard charges; they premise their contention on the theory that the duty of a railroad in connection with the transportation of stock does not terminate at the unloading pen if the shipper-consignee elects to take possession at that point and itself remove the animals immediately and directly from the yard. Accordingly, they attack the Commission's disposition in this case as not conforming to the supposed rule. The United States and the Interstate Commerce Commission, however, take the position that no universal rule of law exists to govern cases such as the present, and, in the alternative, if a positive rule controls that it is not the rule contended for by appellants.

I.

THE COMMISSION PROPERLY DETERMINED THAT TRANSPORTATION OF DIRECT SHIPMENTS OF LIVESTOCK IN CARLOAD LOTS TO THE CHICAGO UNION STOCK YARDS ENDS WITH DELIVERY INTO UNLOADING PENS

A. THE QUESTION OF WHERE A CARRIER'S DUTY ENDS IS FOR THE ADMINISTRATIVE JUDGMENT OF THE COMMISSION

In *Armour & Co.* v. *Alton R. Co.*, 312 U. S. 195, the intervener here presented to a federal district court the same argument which appellants have made in this litigation. See *id.* at 195–196, 197–200, 202. On appeal, this Court affirmed a dismissal of the packer's complaint on the ground that primary jurisdiction was lodged in the Interstate Commerce Commission, to which prior resort must be had. The Court stated that the facts alleged in the complaint revealed that "there are many questions relating to complex transportation problems that must be solved as a prerequisite to a determination of whether the railroads, in violation of contracts or governing laws, have failed properly to deliver petitioner's livestock." 312 U. S. 200. By way of illustration the opinion detailed several questions which would arise; significantly, the Court inquired:

> *First.* At what point did the common carriers' duty to transport come to an end? Neither the statute nor any applicable principle of governing law can be said to mark this boundary, under all circumstances and conditions and in all cases.

The decision agreed with the view of the railroads and the courts below that "adjudication of the issues presented relates to such complex transportation problems that determination of the legal questions must necessarily be preceded by the consideration of extensive evidence in a specialized field, and that decision of such questions is by statute vested exclusively in the Interstate Commerce Commission." *Id.* at 197.

The effect of the *Armour* case is to make clear that the Commission is endowed with discretion to decide at what point railroad transportation ends under particular circumstances, and, in consequence, to determine whether the practice of the carriers in the present case is reasonable and lawful. The decision there is an application of the rule underlying the decision in *Atchison Ry.* v. *United States*, 295 U. S. 193. In that case shippers filed complaints with the Interstate Commerce Commission charging, *inter alia*, that the collection by the Chicago stockyard company of yardage charges on livestock delivered to the consignee at unloading pens was an unreasonable practice in violation of the Interstate Commerce Act. The Commission held that the complainants were entitled to reparation with respect to the charges imposed. This part of the Commission's order was set aside on appeal to this Court. The opinion pointed out that in appropriate circumstances the Commission might properly find that

the carriers' duty to deliver livestock ended with delivery into suitable pens at a public stockyard, and stated that the Commission's order was defective because it was not based on definite findings as to what constituted complete delivery or where transportation ended in the two types of situation there under consideration. The decision thus recognized that the question of where the carriers' obligation ends is for the administrative judgment of the Interstate Commerce Commission.

The 1920 amendment to the Interstate Commerce Act embodied in section 15 (5) now makes it clear as a matter of law that the obligation of a carrier to deliver livestock at a public stockyard includes the unloading of the shipments into suitable pens. But prior to that amendment even the question of the carriers' obligation to unload was not considered a pure question of law but one for the exercise of the Commission's discretion. *Adams* v. *Mills*, 286 U. S. 397. In that case the sole issue was whether the Yard Company at Chicago was entitled to impose an extra charge of 25 cents (collected by the carriers and not absorbed by them) for unloading shipments of livestock. This Court upheld a ruling of the Commission that the collection of the charge was unlawful, saying:

> Whether the unloading in the yards was a part of transportation was not a pure question of law to be determined by merely

> reading the tariffs. Compare *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 294. The decision of the question was dependent upon the determination of certain facts, including the history of the Stock Yards and their relation to the line-haul carriers; the history of the unloading charge at these yards; and the action of the parties in relation thereto. If there was evidence to sustain the Commission's findings on these matters, its conclusion that the collection of the extra charge from the shippers was an unreasonable and unlawful practice must be sustained. [286 U. S. 409–410.]

Clearly, the decision in *Adams* v. *Mills* foretold the decisions in the *Atchison* and *Armour* cases. If it was for the Commission to decide whether the carriers' obligation to transport extended to unloading, equally it was a question for the Commission whether the duty of the carriers extended beyond unloading. Although Congress has settled by statute that railroads must assume the obligation of unloading direct shipments of livestock in carload lots into suitable pens at public stockyards, the Commission still has the responsibility of determining whether in particular cases the duty extends beyond that point.

B. THE COMMISSION'S DETERMINATION WAS WARRANTED BY THE FACTS OF THE PRESENT CASE

It remains to be considered whether the undisputed facts set forth in the Commission's re-

port justify its ultimate conclusion that in this case transportation ends with the unloading of livestock into suitable pens and that the carriers were under no duty to provide free egress from those pens.

In undertaking to determine where transportation ended, the Commission was confronted preliminarily with a serious practical consideration. Direct shipments of livestock to packers at Chicago for several years before the Commission's decision had exceeded 30,000 carloads annually, nearly one-third of the entire rail movement to the Yards. The Commission noted that a substantial shift from producers' consignments to direct consignments was progressing rapidly (R. 53). For this reason and because of the physical conditions at the Yards, the Commission stated that "the evidence fails to disclose how, as a practical matter, an annual volume of 30,000 carloads of livestock could be discharged into and handled through the public streets of Chicago" (R. 53).

A consideration of the usage and long-standing practices at the Chicago Stock Yards strongly supports the solution of the problem reached by the Interstate Commerce Commission. It found that since the establishment of the Yards more than seventy years ago the Yard Company has assessed and collected from the shippers a yardage charge on every animal unloaded on the premises, irrespective of whether they were direct

shipments to a packer or were consigned to commission merchants for sale (R. 39, 42). The line-haul carriers, while paying the Yard Company out of their line-haul rates for the unloading service (R. 42), have never performed services on direct shipments after unloading, and have never been compensated for any services performed at the stockyards after the placing of the animals in unloading pens; the line-haul transportation rates have not included any allowance to cover yardage service (R. 45).

For many decades packers not only paid these yardage charges on direct shipments without protest and acquiesced in the practice as a reasonable one, but in 1892 by a contract with the Yard Company to which the railroads were not parties, specifically guaranteed the earnings from such charges for a limited period and agreed to give up their own stockyard facilities for direct shipments in return for income bonds of the Yard Company's parent corporation (R. 43, 46). After the expiration of this contract appellant Swift expected to receive a share of the Yard Company's earnings, even as late as 1918 (R. 44).

Moreover, upon the enactment of section 15 (5) no complaint was made by the livestock producers, who sponsored that amendment, concerning the payment of these yardage charges, and until 1933 the packers paid without protest the yardage charges, on direct shipments, contained in

tariffs filed by the Yard Company with the Department of Agriculture under the Packers and Stockyards Act of 1921 (R. 51–52). Significantly, in the first case presented to the Interstate Commerce Commission involving construction of section 15 (5) a stockyard company controlled by appellants Swift and Armour successfully took the position that transportation of direct shipments terminated with delivery into unloading pens (R. 52). *Southwestern Horse & Mule Assn. v. A., T. & S. F. Ry.*, 129 I. C. C. 730. And on July 1, 1928, at several public stockyards in which the packers held a substantial interest, yardage charges were being assessed on direct shipments.[12]

Thus the Commission found in the history of the Stock Yards, of the unloading practices, and of the action of all the parties with reference to the yardage charges convincing evidence that "usage and physical conditions combined definitely to end transportation, at least in respect of these shipments, with unloading into suitable pens." *Atchison Ry. v. United States*, 295 U. S. 193, 201. Since the administrative judgment is supported by evidence and is warranted by considerations which this Court has previously held relevant, the determination ought not to be set aside. *Adams v. Mills*, 286 U. S. 397, 409–410.

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[12] The date of July 1, 1928, was selected by the Commission because at that time the packers were in unlimited possession and control of the voting stock of the yard companies referred to (R. 52).

II

THERE IS NO MERIT IN APPELLANTS' ARGUMENT THAT AS A MATTER OF LAW A CARRIER IS REQUIRED TO PROVIDE FREE EGRESS FOR DIRECT LIVESTOCK SHIPMENTS AT A PUBLIC STOCKYARD

We have urged in Point I that the fundamental issue in this case is whether in appropriate circumstances it lies within the administrative discretion of the Interstate Commerce Commission to determine that a carrier's duty with respect to direct shipments of livestock to a public stockyard ends with the delivery of the shipments into unloading pens. We have contended that the Commission has this authority and that the circumstances of this case fully justify the conclusion which the Commission reached here.

The implicit basis of all of appellants' arguments, on the other hand, is that the question of where the carrier's duty ends has not been committed by Congress to the judgment of the Commission, but is a question which must be decided by the application of a rule of law that is controlling in all circumstances. In our view, the decisions in the *Armour* and *Atchison* cases make this argument untenable. But if the Court should decide in favor of appellants on this issue, the Government and the Commission contend that the appellants err when they assert that a carrier of direct shipments of livestock to public stockyards is required in every case and under all circumstances to provide free egress from unloading pens.

1. *The decisions of this Court.* We think that the decision of this Court in *Atchison Ry.* v. *United States*, 295 U. S. 193, establishes the contradictory proposition, if that decision is not accorded the interpretation for which we have contended in Point I, and bars the relief that appellants have sought in the proceedings in this case. In the *Atchison* case the Commission had held that the collection of yardage charges by the Yard Company at the Chicago Union Stock Yards for shipments which were actually received by the consignee at the unloading pens was an unreasonable and unlawful practice under section 1 (6) of the Interstate Commerce Act.[18]

The railroads sought to have the Commission's order set aside on two separate grounds: (1) transportation ended with unloading of livestock into suitable pens; and (2) the order was void for lack of essential findings of fact. An examination of the briefs in that case reveals that the parties argued both of these issues. This Court discussed both and held (alternatively) that the carriers' obligation at public stockyards ended with delivery of the livestock into suitable pens. With respect to this point the Court said:

> Paragraph 5 of § 15 was passed February 28, 1920, during and presumably with

[18] The Commission's findings and opinion are reported in *Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry.*, 195 I. C. C. 553.

knowledge of the controversy later brought here in *Adams v. Mills, supra.* While declaring that transportation of livestock to public stockyards shall include unloading without extra charge, it left undisturbed the Yard Company's practice of making a charge for livestock received. The Packers and Stockyards Act approved August 15, 1921, subjects public stockyards to regulation by the Secretary of Agriculture. Section 301 (b) defines stockyards services to include, among other things, facilities furnished at a stockyard in connection with the receiving, holding and delivery of livestock. Section 406 provides that the Act shall not affect the jurisdiction of the Commission or confer upon the Secretary concurrent jurisdiction over any matter within the jurisdiction of the Commission. * * * Transportation does not include delivery within the Hygrade plant or the furnishing of the properties, overhead runway and all, that are used for that purpose. Usage and physical conditions combined definitely to end transportation, at least in respect of these shipments, with unloading into suitable pens as is now required by § 15 (5). Like the railroads, public stockyards are public utilities subject to regulation in respect of services and charges. The statutes cited clearly disclose intention that jurisdiction of the Secretary shall not overlap that of the Commission. The boundary is

the place where transportation ends. [295 U. S. 199, 201.][14]

The decision is, on the interpretation which is necessitated by the nature of appellants' contentions here, an adverse ruling on the same arguments which appellants now present, for we think there is no substantial difference between the facts there involved and those before the Court here. Appellants insist that the *Atchison* case is distinguishable because there the stock in direct shipment was driven over the scales of the Yard Company and weighed on the way out. But it

[14] Appellant Swift suggests (Br. 25, 79) that this portion of the opinion was in any event only *dictum*. Such an interpretation is untenable; if the Court had accepted the view that shippers had an absolute legal right to free egress, it would have sustained the order whether or not supporting findings of fact had been made.

In arguing that the Court's discussion of this point was *dictum*, appellants rely upon the statement in *Union Stock Yard Co.* v. *United States*, 308 U. S. 213, 219, that the Commission's order in the *Atchison* case was set aside "on the sole ground" that the Commission's findings failed to show that the service for which the charge was made was a part of the loading or unloading services, or otherwise a service which the rail carrier was bound to furnish. It seems clear from the context of this statement that it was intended to make plain that the *Atchison* decision was no obstacle to holding in the *Union Stock Yard* case that loading and unloading were transportation services and within the Commission's jurisdiction. Further than that, the statement would serve only to affirm the existence of administrative discretion in the Commission, for which we have contended in Point I.

seems plain that the Court did not regard this single circumstance as controlling.

The opinion stated that the question in that case was not one of mere egress to the public highways. 295 U. S. 201. However, as the Commission pointed out (R. 48), the question here is not one of "mere" egress to the street; the evidence shows that the alleys, ways, and in some instances overhead viaducts belonging to the yard company must be used to remove animals from the unloading pens to the public streets. As the Commission said:

> In the statement referred to by complainant, the Court was contrasting the situation at public stockyards with the situation at livestock terminals other than public stockyards, and it did not draw a contrast between a route through public yards to a street and thence to a packing plant with a route through public yards to the street. The evidence here conclusively shows that there is no essential difference between the routes and the services required from the unloading pens to plants outside the stockyards and a way out to the public highways. (R. 48–49.)

In other instances this Court has reaffirmed the doctrine of the *Atchison* case. It has upheld action based on the assumption that the jurisdiction of the Interstate Commerce Commission ended at a public stockyard with the placing of the livestock in suit-

able pens. Thus, in *Denver Stock Yard Co.* v. *United States*, 304 U. S. 470, this Court held that the Secretary of Agriculture properly excluded facilities used for the loading and unloading of rail-borne livestock from consideration as part of the rate base in ascertaining proper charges for the stockyards services performed, and stated:

> Stockyard services do not commence until unloading ends; they end when loading begins. See *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193, 198. [304 U. S. 477.]

In two cases the Court has reviewed rate orders issued by the Secretary of Agriculture, under the Packers and Stockyards Act, that applied to yardage charges imposed for facilities used for egress from unloading pens, and did not question in any way the jurisdiction of the Secretary of Agriculture to regulate those charges. *Denver Stock Yard Co.* v. *United States*, *supra*; *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38; cf. *Union Stock Yards Co. of Omaha* v. *United States*, 9 F. Supp. 864 (D. C. Neb.) (R. 54).

Appellants suggest that certain language in the opinion in *Union Stock Yard Co.* v. *United States*, 308 U. S. 213, indicates that the doctrine of *Covington Stock-Yards Co.* v. *Keith*, 139 U. S. 128, was there reaffirmed as applicable to public stockyards,

despite the intervening decision in the *Atchison* case. They point to the following language:

> Without the aid of these statutes the transportation of livestock by rail was held to begin with its delivery to the carrier for loading onto its cars, and to end only after unloading for delivery or tender to the consignee at the place of destination. *Covington Stock-Yards Co.* v. *Keith*, 139 U. S. 128 136. The same rule has been repeatedly applied since the statute was adopted. *Erie R. Co.* v. *Shuart*, 250 U. S. 465, 468; *Atchison T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193, 198, and cases cited; *Denver Union Stock Yard Co.* v. *United States*, 304 U. S. 470. * * * [308 U. S. 219.]

The citations to the *Atchison*, *Shuart*, and *Denver* cases refer to passages in the opinions in those cases which state that the furnishing of unloading facilities is a part of transportation service. In dealing with the issue of whether the furnishing of loading and unloading facilities is a part of transportation service, these cases undoubtedly applied the same rule that had been applied in the *Covington* case. Accordingly, it should not be inferred that this language in the *Union Stock Yard* case was intended to have the broader significance of repudiating the *Atchison* decision.

2. *The administrative construction.* Since the *Atchison* case, the Interstate Commerce Commission has consistently relied upon the language of the opinion there and followed its presumed mandate

in holding that in the case of direct shipments of livestock to public stockyards transportation terminated when the shipments were placed in suitable pens. *Livestock Loaded and Unloaded at Chicago,* 213 I. C. C. 330, 339; *Livestock To Or From Union Stock Yards, Chicago,* 222 I. C. C. 765, 771, 772; *Cancelation of Livestock Services At Chicago,* 227 I. C. C. 716; Ex Parte *No. 127, Status of Public Stock Yard Companies,* 245 I. C. C. 241.

Similarly, the Secretary of Agriculture has disclaimed jurisdiction, under the Packers and Stockyards Act, over charges for unloading livestock into suitable pens at public stockyards. *Union Stock Yard Co.* v. *United States,* 308 U. S. 213, 223, footnote. And he has taken jurisdiction of yardage charges covering mere egress at many public yards, including the charges here in question (R. 53).[15] The Commission specifically found that the yardage charges now applicable at the

[15] The record shows that the Secretary in 1935 by a formal order instituted a proceeding for the purpose of determining the lawfulness of all the Yard Company's rates and charges at Chicago, including charges on direct shipments (Ex. 37, R. 550). After extended hearings the examiner filed a proposed report and order. Although the report does not appear in the record, it clearly appears from the packers' petition for intervention in that case, that yardage charges on direct shipments, the very charges here involved, were given deliberate consideration and their validity was upheld (Ex. 63, pp. 7, 8, R. 643). The Yard Company thereafter filed its Tariff No. 11 with the Secretary in which it retained its charges on direct shipments to packers (Ex. 67, R. 710).

public stockyards at St. Joseph, Missouri, Denver, Colorado, and Omaha, Nebraska, for use of facilities and services of the respective yards companies in connection with egress for direct shipments consigned to packers are those prescribed by the Secretary (R. 54).[16]

It is a familiar rule of law that settled construction of statutes by the administrative authorities entrusted with their application will not be lightly

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[16] Appellant Swift contends (Br. 37–41) that the finding was erroneous. However, the record shows that in 1931 the Secretary initiated a general investigation of the charges made by the Union Stock Yards Company of Omaha, Ltd. The yardage charges at that yard were expressly recognized as applying to direct consignments to packers (Ex. 42, p. 6, par. 22, R. 593). Jurisdiction over these charges was taken, and in 1933 they were ordered reduced in amount. In 1937 the order was modified by altering the applicable rate (Ex. 42, R. 593).

In 1934 after an extended proceeding the Secretary issued an order setting certain rates and charges for the St. Joseph (Mo.) Stock Yards Company. It was expressly set forth in the findings that yardage charges were assessed against direct shipments (Ex. 43, p. 9, par. 22, R. 594). The reasonableness of the charges was determined and proper rates prescribed (Ex. 43, p. 74, R. 594). The yardage charges were again considered and the earlier order modified, but only to the amount of the charge, in April 1938 (Ex. 43, R. 594). Similarly, the Secretary has exercised his jurisdiction over such yardage charges at the Denver Union Stock Yard Company. These proceedings were initiated in 1934 and ended in an order dated February 1937, determining that the yardage charges, including expressly the charges "on livestock consigned direct to packers and slaughterers" were unreasonable. Yardage charges on direct shipments were provided for in the new schedule of maximum reasonable charges (Ex. 41, p. 79, R. 592).

disturbed by the courts. *Boston & Maine R. R.* v. *Hooker*, 233 U. S. 97; *United States* v. *Chicago North Shore R. R.*, 288 U. S. 1; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488. In the present case Congress has subsequently taken action that may be regarded as a ratification of the administrative construction. In the Transportation Act of September 18, 1940 (54 Stat. 898–962), an omnibus transportation measure, Congress amended the Interstate Commerce Act extensively. This legislation was enacted only a few months after the Commission had announced its decision in the present controversy, wherein it had reasserted and applied the statutory construction adopted in the *Atchison* case. It is significant, then, that while in this Act Congress made several amendments to certain paragraphs of section 15 (54 Stat. 911, sec. 10), it did not alter the provisions of paragraph 5 of that section. Cf. *Helvering* v. *Reynolds Co.* 306 U. S. 110, 114.[17]

3. *Legislative history of the statutes involved.* The legislative history of section 15 (5) of the Interstate Commerce Act and of the Packers and Stockyards Act lends support to the conclusion that

[17] It is notable also that the livestock producers, who urged the enactment of section 15 (5) of the Interstate Commerce Act, have apparently acquiesced in the construction of that section adopted in the *Atchison* case, since they have not pressed amendatory legislation or objected to the administrative division of jurisdiction between the Commission and the Secretary of Agriculture. (R. 51–52.)

in the case of direct shipments of livestock in carload lots to a public stockyard a carrier's duty is complete when the shipments are placed in suitable unloading pens.

When Congress enacted section 15 (5) it was familiar with the situation existing at Union Stock Yards in Chicago. These yards were the principal public stockyards, and the railroads, shippers, and the Yard Company were then engaged in a tripartite controversy as to where the transportation duties of the carriers terminated at Union Stock Yards. Just before the enactment of section 15 (5) this dispute ended in a decision of the Interstate Commerce Commission that rejected the contentions of the packers and shippers. See *Livestock Loading and Unloading Charges*, 52 I. C. C. 209.[18]

At the time of the enactment of section 15 (5), shippers of livestock to Union Stock Yards were subjected to two charges by the Yard Company, in addition to the line-haul railroad transportation rate; one was the yardage charge long imposed on

[18] In this case the Commission upheld the carriers in their refusal to absorb out of their line haul-rates increased charges assessed by the Yard Company for loading and unloading livestock at Union Stock Yards. This was on the ground that it was the duty of shippers rather than of the carriers to load and unload livestock and other carload traffic at these yards. The decision was reversed by the Commission on July 15, 1920, after rehearing, in *Live Stock Loading and Unloading Charges*, 58 I. C. C. 164. This latter conclusion was ultimately sustained by this Court in *Adams v. Mills*, 286 U. S. 397.

all shipments, whether direct or otherwise, and the other was the additional unloading charge, which the Commission had held the railroads need not absorb. The amendment now embodied in section 15 (5) was designed to describe all of the terminal duties which the railroad were required to perform at public stockyards.[19] The existence of this pur-

[19] This purpose is shown by the statements of Senator Cummins, of Iowa, who introduced the bill in the Senate. For example, he stated:

"Mr. President, this proposed amendment has been brought to my attention by the American National Livestock Association * * *.

"The reasons that have been submitted to me for the adoption of the amendment are that it has become the practice of the railroad companies, or those connected with the railroad companies, to separate their charges, and when a shipper, especially a live-stock shipper, asks what the rate is from the point of origin to the point of delivery, which is a stockyard, the rate is given according to the published tariff, and then the railroad company adds to the rate a series of charges for various services performed in connection with the transportation of the live stock, so that the shipper does not know from time to time what it will cost him to have his stock delivered at the point to which he ships it". [59 Cong. Rec. 674]. It is also clear from Senator Cummins' statements that he did not regard the definition of transportation duties as including the furnishing of egress. Thus he said:

"I am entirely in sympathy with the purpose of these shippers, and want to bring the whole subject within the jurisdiction of the Interstate Commerce Commission, and compel the carriers to state in the published tariffs the rate that must be paid by the shipper for the entire service of taking the property at the point of origin and *delivering it to the point at which it is to leave the car*." [*Ibid.*, italics supplied.]

pose makes particularly significant the failure of the amendment to disturb the Yard Company's long-standing yardage charges against consignees upon all livestock received, or to require the railroads to absorb these charges, when the amendment specifically required the carriers to make delivery of inbound shipments into suitable pens.

These considerations point to the conclusion that section 15 (5) is an expression of congressional intent that transportation at public stockyards should terminate with the delivery of livestock into suitable unloading pens.[20]

That Congress intended in the case of public stockyards to terminate transportation at the unloading pens is also apparent from the legislative history of the contemporary Packers and Stockyards Act (enacted August 15, 1921). In the 66th Congress a Senate bill (S. 3944) was introduced providing for a Federal Livestock Commission to regulate packers and stockyards. The House Committee on Agriculture proposed a substitute bill giving control of the stockyards to the Interstate Commerce Commission, because "that commission already has control over transportation of cattle, which does not end until they are unloaded at the yards * * *." H. Rep. No. 1297, 66th Cong., 3d Sess., p. 9. In the 67th Congress the House

[20] In this respect Congress doubtless intended to distinguish between public stockyards and private stockyards. See the last sentence of section 15 (5), Appendix, *infra*, p. 42.

Committee on Agriculture proposed a bill substantially in the form finally adopted as the present Packers and Stockyards Act. Representative Haugen, Chairman of the House Committee on Agriculture, when introducing that bill, said:

> It is proposed to give the Secretary of Agriculture jurisdiction * * * from the time the live stock is unloaded at the terminal yards and after it is out of the jurisdiction of the Interstate Commerce Commission.
>
> Up to the time of unloading the live stock the Interstate Commerce Commission has jurisdiction * * *. Hence, it is proposed that the Secretary's jurisdiction shall begin where the Interstate Commerce Commission's jurisdiction ends * * *. [61 Cong. Rec. 1800.]

The definition of stockyard services in the Packers and Stockyards Act specifically includes services or facilities furnished at a stockyard in connection with the receiving, holding, or delivering of livestock.[21] Loading and unloading, on the other hand, are not included in that definition. The presence of this language confirms the view that the delivery services after "delivery into suitable pens" which are here involved should be regarded as stockyard and not transportation services.[22]

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[21] See Appendix, p. 42, *infra*.

[22] Cf. *Union Stock Yard Co. v. United States*, 308 U. S. 213, 217.

CONCLUSION

The question presented by appellant's original complaint was addressed to the administrative discretion of the Interstate Commerce Commission, and the Commission's conclusion is warranted by the facts of the present case. Alternatively, we contend that the Commission adopted a correct rule of law in acting on appellant's complaint against the carriers.

It is therefore respectfully submitted that the decree of the District Court dismissing the complaint brought in that court was correct and should be affirmed.

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FEBRUARY 1942.

APPENDIX

Interstate Commerce Act, February 4, 1887, c. 104, Part I, 24 Stat. 379, as amended:

Section 1 (3) (a) provides:

> * * * The term "transportation" as used in this chapter shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. * * * (U. S. C. title 49, sec. 1 (3) (a).)

Section 15 (5) provides:

> Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee, or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee, or owner, or to try an intermediate market, or to comply with quarantine regulations. The commission may pre-

scribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers existing on February 28, 1920, by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards. (U. S. C. title 49, sec. 15 (5).)

Packers and Stockyards Act, August 15, 1921, c. 64, 42 Stat. 159:

Section 301 (b) provides:

> The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of live stock; * * * (U. S. C. title 7, sec. 201.)

Section 406 provides, in part:

> Nothing in this chapter shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission. (U. S. C. title 7, sec. 226.)

U. S. GOVERNMENT PRINTING OFFICE: 1942